

**IN THE UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF OHIO  
EASTERN DIVISION**

ULICO CASUALTY COMPANY

Plaintiff,

v.

KEYBANK NATIONAL  
ASSOCIATION, et al.,

Defendants.

Case No. 2:05-CV-791

Judge Watson

Magistrate Kemp

**Plaintiff's Motion for Leave to File Amended  
Complaint**

Pursuant to Rule 15 of the Federal Rules of Civil Procedure, Plaintiff Ulico Casualty Company, through counsel, hereby respectfully requests leave to file its First Amended Complaint. The reasons for this motion are more fully set forth in the following Memorandum in Support.

Respectfully Submitted,

CLARK, PERDUE, ARNOLD & SCOTT

/s/ Glen R. Pritchard

**GLENN R. PRITCHARD (0040453)**

Attorney for Plaintiff

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## **Memorandum in Support**

Plaintiff originally filed its Complaint in Ohio state court. The defendants removed the action to federal court, alleging federal preemption under the Employee Retirement Income Security Act ("ERISA"), and have filed a motion to dismiss Plaintiff's Complaint based on a lack of standing. Plaintiff now seeks to amend its Complaint to allege the basis for its standing to bring this action under ERISA.

Rule 15 of the Federal Rules of Civil Procedure provides, in pertinent part, as follows:

(a) Amendments. A party may amend the party's pleading once as a matter of course at any time before a responsive pleading is served or, if the pleading is one to which no responsive pleading is permitted and the action has not been placed upon the trial calendar, the party may so amend it at any time within 20 days after it is served. Otherwise a party may amend the party's pleading only by leave of court or by written consent of the adverse party; and leave shall be freely given when justice so requires.

In this case, justice requires that Plaintiff be allowed to amend its Complaint. For the reasons set forth in Plaintiff's Memorandum Contra Defendants' Motion to Dismiss, filed contemporaneously with this motion, Plaintiff has standing to bring an action by virtue of a subrogation provision and an assignment of rights authorizing Ulico to bring this action on behalf of parties who are granted standing under ERISA. Plaintiff should be permitted to amend its Complaint to set forth facts supporting its standing under federal law after having been removed to a federal forum. A copy of Plaintiff's proposed Amended Complaint is attached hereto as Exhibit A.

For these reasons, Plaintiff respectfully requests that its motion for leave to file its amended complaint be granted. A proposed Entry accompanies this motion.

Respectfully Submitted,

CLARK, PERDUE, ARNOLD & SCOTT

/s/ Glen R. Pritchard

**GLEN R. PRITCHARD (0040453)**

Attorney for Plaintiff

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**CERTIFICATE OF SERVICE**

This is to certify that a copy of the foregoing was filed electronically with the Clerk of Court using the CM/ECF system which will send notification of such filing to the following: Karen L. Giffen and Steven Malynn, attorneys for Defendants.

CLARK, PERDUE, ARNOLD & SCOTT

/s/ Glen R. Pritchard

**GLEN R. PRITCHARD (0040453)**

Attorney for Plaintiff